

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:LM:MCT:CIN:1:TL-N-3833-01

LRAverbeck

date: **JUL 18 2001**

to: Marianne Heck, Acting Section Chief  
Technical Support Staff

from: Area Counsel  
(Heavy Manufacturing, Construction and Transportation)

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subject: [REDACTED]  
Consent to Extend Statute of Limitations

This memorandum responds to your request for assistance dated June 14, 2001. This memorandum should not be cited as precedent.

**ISSUE**

Whether the language proposed for Form 872 extending the Statute of Limitations on assessment and collection under I.R.C. § 6501(c)(4) is adequate to restrict the extension to the enumerated issues.

**CONCLUSION**

We suggest additional language on the Form 872 to restrict the statute extension to the enumerated issues and to ensure that both parties are equally subject to the restrictions.

**FACTS**

The corporate tax return for the tax period ending December 31, [REDACTED] for [REDACTED] is currently under examination. The statute of limitations for this tax year ends on [REDACTED]. The taxpayer will not agree to a consent to extend the statute of limitations unless the consent is restricted. An extension of the statute of limitations would allow for a fuller examination of the LILLO amounts involved and their classification for tax purposes, a refinement of unagreed issues, and a refinement of the amount and classification of acquisition expenditures under I.R.C. § 195. The taxpayer has also expressed an intent to take the case to Appeals and the extension will assure that the taxpayer has adequate time to do so.

### DISCUSSION

Internal Revenue Code § 6501(a) provides that, as a general rule, tax must be assessed within three years of the filing date of the return. Under I.R.C. § 6501(c)(4), a taxpayer and the Service may consent in writing to an extension of the time for making an assessment. Chapter 22 of the Internal Revenue Manual provides that the Internal Revenue Service may, in unusual circumstances, obtain consents from the taxpayer to extend the Statute of Limitations on Assessment date. An examiner may request a consent in cases where less than 180 days remain until the statute expires and either there is insufficient time to complete the examination and administrative processing of the case, or it appears there will be substantial additional tax due, or the taxpayer has requested the case be sent to Appeals. The examiner should not send a case to Appeals with less than 180 days remaining on the statutory limitation period. In such a case, if no consent to extend the statute can be obtained, the examiner may have to issue the statutory notice of deficiency.

Since the taxpayer has requested that this case go to Appeals and there are less than 180 days remaining on the statutory limitations period, a restricted consent would be appropriate. Also, since it appears that the issues are not fully developed and more information is desired from the taxpayer (who has not been completely forthcoming), it is advisable to obtain the restricted consent.

Section 6061 provides that any return, statement, or document made under any internal revenue law must be signed in accordance with the applicable forms or regulations. The regulations under section 6501(c)(4) do not specify who may sign consents executed under that section. Accordingly, the Service generally applies the rules regarding the execution of the original returns to Forms 872 and the name of the taxpayer shown on the return can be used on the consent. Section 6062 of the Internal Revenue Code provides that, generally, a corporation's income tax returns must be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to act. The fact that an individual's name is signed on the return is prima facie evidence that the individual is authorized to sign the return. Accordingly, any such officer may sign a consent, whether or not that person was the same individual who signed the return.

There is some uncertainty as to the extent of the restrictions covered by the language on the Forms 872. The standard Form 872 provides the taxpayer a related six month extension from the expiration of the agreement in which to file a

refund claim, as specified in I.R.C. § 6511(c)(1). Where the agreement itself is restricted to particular issues, it would seem unnecessary to specifically restrict a refund claim to those issues also. In a 1992 decision, the 7<sup>th</sup> Circuit Court of Appeals noted that as the Code allows extensions by agreement for any tax imposed under Title 26, the parties are free to limit the terms of the agreement to a specific tax. In that case, Indiana Nat'l Corp. v. United States, 980 F.2d 1098 (7<sup>th</sup> Cir. 1992), the agreement was expressly limited to the assessment of a specific type of tax, namely income tax. A refund claim was not expressly limited in the agreement, yet the court held that the taxpayer could not file a refund claim for excise tax where, but for the extension agreement, the statute of limitations had expired. Indiana Nat'l Corp., 980 F.2d 1098 (7<sup>th</sup> Cir. 1992).

However, the Service still follows a more liberal interpretation of section 6511(c), as applied by the U.S. District Court for the Northern District of Alabama in Liberty Nat'l Life Ins. Co. v. United States, 77-1 U.S.T.C. ¶ 9107 (ND Ala. 1976), rev'd on other grounds, 600 F.2d 1106 (5<sup>th</sup> Cir. 1979), cert. denied, 444 U.S. 1072 (1980). Namely, that even though a consent to assess tax is restricted to a particular issue, the taxpayer's right under section 6511(c) to claim a credit or refund based upon such consent is not automatically so restricted. Thus, although the Form 872 would restrict the extension to the issues listed with no distinction as to assessments or refund claims, we think it would be in the best interest of the Service to use even more specific language in the agreement so that refund claims are clearly limited in the same manner as assessments.

To achieve such a similar restriction on credits and refunds, we suggest you add an additional restricted paragraph to the consent. The following paragraph, inserted after the restricted issues, would limit the taxpayer's right to file a claim for credit or refund:

The provisions of section 6511(c), as set forth in paragraph (2), above, are limited to any refund or credit resulting from adjustments for which the period for assessment is extended under this agreement.

In addition, we suggest the following language on the consent form to restrict the issues:

The Statute of Limitations extended by this agreement is limited to additional deficiency assessments or claims for credit or refund, including any related adjustments to tax liability arising from changes in the tax treatment of, the

following issues only:

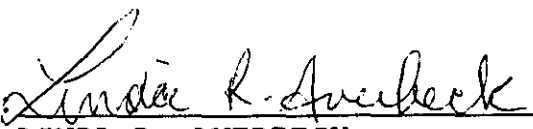
1. The tax treatment of expenses and income, including up front payments and net tax deductions, related to Lease-In-Lease-Out agreements.
2. The classification of acquisition expenses incurred in 1997 as currently deductible, capital, or eligible for treatment under I.R.C. § 195.
3. The amount of flow-through income or loss from rental real estate activities realized by the taxpayer from the [REDACTED].

Please note that section 6501(c)(4)(B) requires the IRS to advise taxpayers of their right to refuse to extend the statute of limitations on assessment, or in the alternative, to limit an extension to particular issues or for specific periods of time, each time the Service requests that the taxpayer extend the limitation period. To satisfy this requirement, you may provide Pub. 1035, "Extending the Tax Assessment Period" to the taxpayer when you solicit the Form 872. Alternatively you may advise the taxpayer orally or in some other written form of the I.R.C. § 6501 requirement.

Regardless of which method you use to notify the taxpayer, you should document your actions in this regard in the case file. Although section 6501(c)(4)(B) does not provide a sanction or penalty on the Service for failure to comply with the notification requirement, a court might conclude that an extension of the statute of limitations is invalid if the Service did not properly notify the taxpayer.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney-client privilege. If disclosure becomes necessary, please contact this office for our views.

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By   
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